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MONTANA'S SUBDIVISION AND SURVEYING LAWS AND REGULATIONS

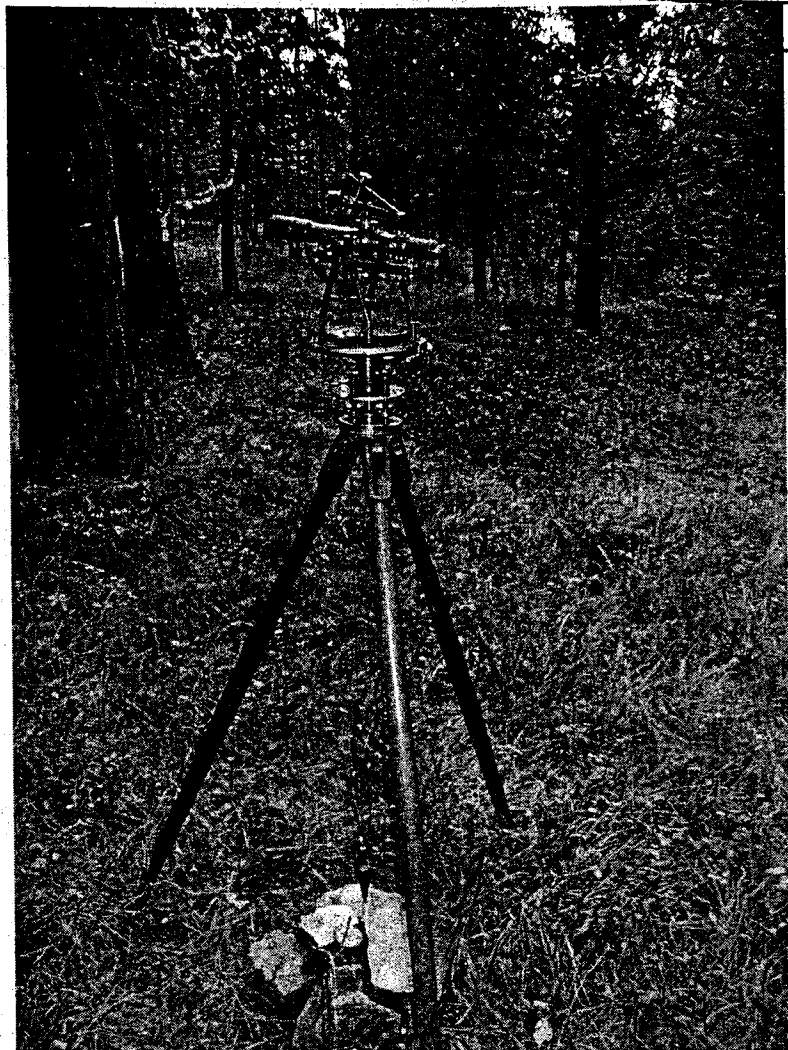
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SENATE NATURAL RESOURCES

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II. Specific Exemptions

A. Occasional Sales

[Note: The 1993 amendments to the Act deleted the "occasional sale" exemption formerly contained in section 76-3-207(1)(d), MCA, (Sec. 4, Ch. 272, L. 1993).]

If an occasional sale exemption is employed in an attempt to evade the Act, the division of land in question is to be treated as a subdivision. *State ex rel. Department of Health and Environmental Sciences v. LaSorte*, 182 Mont. 267, 596 P.2d 477 (1979) (dictum).

The 12-month limitation period on occasional sales of land established in former sections 76-3-207(1)(d), MCA, commences with the actual transfer of interest in the parcel of land from the grantor to the grantee. 38 Op. Att'y Gen. No. 117 (1980).

A single certificate of survey cannot reflect the creation of more than one lot to be conveyed under the occasional sale exemption provided in (former) section 76-3-207(1)(d), MCA, nor can a certificate of survey qualify for the occasional sale exemption if it divides a parcel of land more than once regardless of the nature of the other parcels created. 40 Op. Att'y Gen. No. 16 (1983), as clarified by letter opinion to Jim Nugent, Esq., September 21, 1983.

Land within a parcel created without subdivision review pursuant to the occasional sale exemption cannot again benefit from that exemption during the 12-month period following the original transfer. 41 Op. Att'y Gen. No. 21 (1985).

If a parcel of land has been divided into parcels of 20 acres or more, each of the owners of the new parcels is entitled to use the occasional sale exemption once during the 12-month period following the conveyance of the parcels. 41 Op. Att'y Gen. No. 21 (1985). [Note: the 1993 amendments to the Act redefined the term "subdivision" as it is used in the Act to include divisions of land creating parcels of less than 160 acres (section 76-3-103(15), MCA; Sec. 2, Ch. 272, L. 1993). The term formerly included only parcels containing less than 20 acres.]

If a tract of land is divided into two parcels, each under 20 acres in size, and one of the parcels is sold as an occasional sale, the remaining parcel cannot, in the absence of another legitimately claimed exemption, be sold within 12 months of the sale of the first parcel without subdivision review. 41 Op. Att'y Gen. No. 40 (1986).

Because the Legislature has provided that the occasional sale exemption is subject to the condition that it not be used for the purpose of evading subdivision review, the governing body can determine whether this condition had been met. Local subdivision regulations may not, however, set out a per se or automatic rule to determine whether a proposed use of an exemption is an evasion of the Act. *State ex rel. Leach v. Visser*, (Opinion and Order on Petition for Rehearing), 234 Mont. 438, 767 P.2d 858 (1989).